

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND

IN RE: GENE M. FONTAINE DEBTOR.	CASE NO. 14-10861-DF CHAPTER 7
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U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR GSR MORTGAGE LOAN TRUST 2004-8F, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-8F it's successors or assigns,

Movant.

v.

GENE M. FONTAINE,

Debtor.

MOTION OF U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR GSR MORTGAGE LOAN TRUST 2004-8F, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-8F FOR RELIEF FROM THE AUTOMATIC STAY AND FOR LEAVE TO FORECLOSE MORTGAGE AND MEMORANDUM IN SUPPORT THEREOF

U.S. Bank National Association, as Trustee for GSR Mortgage Loan Trust 2004-8F, Mortgage Pass-Through Certificates, Series 2004-8F (hereinafter "Movant") a secured creditor, hereby moves this Court for Relief from the Automatic Stay pursuant to Bankruptcy Rules 4001 and 9014 and 11 U.S.C. Section 362(d) and for leave to foreclose a certain mortgage encumbering the property owned by the Debtor, known as 19 Anchorage Way, Barrington, RI 02806. In support of this Motion, Movant states as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (the "Bankruptcy Code"). This proceeding is a "core" proceeding as this term is defined in the Code.
2. On April 15, 2014, Gene M. Fontaine (hereinafter the "Debtor") filed a voluntary Chapter 7 petition in Bankruptcy.

3. Movant is the current holder of a certain mortgage given by Debtor to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Fleet National Bank in the original principal amount of \$416,000.00 dated May 7, 2004, and recorded with the Town of Barrington Land Evidence Records in Book 841, Page 238, (the "Mortgage"). The Mortgage secures a promissory note of even date and original principal amount given by the Debtor to Fleet National Bank (the "Note").
4. Mortgage Electronic Registration Systems, Inc. as nominee for Fleet National Bank, its successors and assigns assigned the mortgage to U.S. Bank National Association as Trustee for GSR Mortgage Loan Trust 2004-8F, Mortgage Pass through Certificates, Series 2004-8F by assignment dated August 12, 2013 and recorded with the Town of Barrington Land Evidence Records in Book 1379, Page 79 a copy which is annexed here to as Exhibit A. The current loan servicer for the Movant is PHH Mortgage Corporation.
5. The Mortgage encumbers real property known as 19 Anchorage Way, Barrington, RI 02806 (hereinafter the "Property"). A copy of the Note and Mortgage are annexed hereto as Exhibits "B" and "C". The Mortgage is in first lien position. Aside from the Property, there is no other collateral securing the Debtor's obligation to Movant.
6. The Debtor has defaulted on the Note and Mortgage by failing to make regular payments to Movant.
7. As of April 18, 2014, the balance due Movant on the Note was approximately \$415,181.74 (may not include negative escrow balances or recent escrow advances). The full amount of the Movant's claim together with allowable post-petition interest, reasonable attorneys fees, court costs, and other recoverable expenses is secured by the Mortgage.
8. According to the Debtor's Schedules, the fair market value of the Property is \$434,000.00. Accepting the Debtor's valuation for purposes of this motion only, the liquidation value of the Property is \$410,064.00 based upon a usual and customary broker's commission of \$21,700.00 (5% of stated fair market value), deed stamps of \$1,736.00 and \$500.00 in miscellaneous estimated closing costs.

9. As of the filing date of this motion, the Debtor's mortgage account is due for the September 1, 2012 contractual due date. The current monthly payment is \$3,243.58, subject to such subsequent adjustment as may be specified in the note.

10. As of the filing date of this Motion, Debtor owed Movant a total contractual arrearage of \$74,618.68 calculated as follows:

- 10 monthly payments (09/01/12 - 06/01/13) at \$3,235.25	\$32,352.50
- 1 monthly payments (07/01/13 - 07/01/13) at \$3,807.5	\$3,807.50
- 10 monthly payments (08/01/13 - 05/01/14) at \$3,243.58	\$32,435.80
- Property Inspection	\$202.50
- Appraisal	\$170.00
- Foreclosure Fees and Costs	\$4,724.38
- Motion Fees and Costs	\$926.00
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Total Contractual Arrearage	\$74,618.68

11. In addition to the Mortgage to Movant, there are outstanding liens on the Property as follows:

<u>Lien</u>	<u>Type</u>	<u>Amount</u>	<u>Book/Pg</u>
Movant	1 <sup>st</sup> Mortgage	\$415,181.74	841/238
Citibank Na	Junior Mortgage	\$231,125.00	973/336

The total of all liens on the Property is approximately \$646,306.74.

12. Movant is entitled to Relief from the Automatic Stay for cause pursuant to Section 362(d)(1) of the Code inasmuch as the Debtor has failed to make regular monthly mortgage payments to the Movant in violation of the terms of the Note and Mortgage.

13. Movant is entitled to Relief from the Automatic Stay and leave to foreclose its mortgage pursuant to 11 U.S.C. Section 362(d)(2) in that the Debtor has no equity in the Property above and beyond the Property's liquidation value and the Property is not necessary to an effective reorganization of the Debtor.

14. **Within fourteen (14) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response**

**to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.**

WHEREFORE, Movant requests that this Honorable Court:

- (a) Grant Movant Relief from the Automatic Stay pursuant to 11 U.S.C. Section 362(d) and for leave to Foreclose Mortgage, allowing Movant, its successors or assigns to foreclose said mortgage (including, at its sole option, leave to accept a deed-in-lieu of foreclosure from the Debtor, their heirs, successors, assigns or transferees); and for it or a third party purchaser to prosecute summary process proceedings to evict any persons residing in the Property.
- (b) In the alternative, order Debtor to provide Movant with adequate protection of its claim; and
- (c) Grant such other Relief as this Honorable Court may deem just.

Date: May 22, 2014

Respectfully submitted,  
U.S. Bank National Association, as Trustee for GSR  
Mortgage Loan Trust 2004-8F, Mortgage Pass-  
Through Certificates, Series 2004-8F  
by its attorney,

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